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February 7, 2001

**RECEIVED**

**FEB 7 2001**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room CY-B402  
Washington, D.C. 20554

Re: Comments of the Competitive Telecommunications Association on the Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks, Inc., for Authorization to Provide In-region, InterLATA Services in Massachusetts  
**CC Docket No. 01-9**

Dear Ms. Salas:

Enclosed for filing in the above-referenced matter, please find an original and one copy of the Comments of the Competitive Telecommunications Association dated February 6, 2001.

The enclosed documents were also filed electronically last evening, through the Commission's ECFS. This filing is also being served on the Massachusetts Department of Telecommunications and Energy, the U.S. Department of Justice, and on the service list attached hereto.


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BCDE

KELLEY DRYE & WARREN LLP

Magalie Roman Salas, Secretary  
February 7, 2001  
Page Two

Should you have any questions with regard to the foregoing, please do not hesitate to contact the undersigned at your convenience. Thank you for your attention to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Andrew M. Klein". The signature is fluid and cursive, with the first name "Andrew" and last name "Klein" clearly distinguishable.

Andrew M. Klein

AMK:mla

Enclosures

cc: Jonathan Lee, CompTel  
Attached Service List

## **CERTIFICATE OF SERVICE**

I, Michelle L. Arbaugh, hereby certify that I have caused a copy of the foregoing "Comments of the Competitive Telecommunications Associations" to be served on this 7<sup>th</sup> day of February, 2001, via hand delivery, upon the following:

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Federal Communications Commission  
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Washington, D.C. 20554

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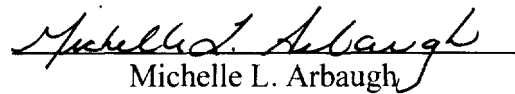
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Michelle L. Arbaugh

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

Application by Verizon New England,	)	
Inc., Bell Atlantic Communications,	)	
Inc. (d/b/a Verizon Long Distance),	)	CC Docket No. 01-9
NYNEX Long Distance Company	)	
(d/b/a Verizon Enterprise Solutions),	)	
and Verizon Global Networks, Inc.,	)	
for Authorization to Provide	)	
In-region, InterLATA Services in	)	
Massachusetts	)	

**COMMENTS OF THE  
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

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Attorneys for the Competitive  
Telecommunications Association

Dated: February 6, 2001

**Before the  
Federal Communications Commission  
Washington, DC 20554**

Application by Verizon New England,	)	
Inc., Bell Atlantic Communications,	)	
Inc. (d/b/a Verizon Long Distance),	)	CC Docket No. 01-9
NYNEX Long Distance Company	)	
(d/b/a Verizon Enterprise Solutions),	)	
and Verizon Global Networks, Inc.,	)	
for Authorization to Provide	)	
In-region, InterLATA Services in	)	
Massachusetts	)	

**COMMENTS OF  
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association (“CompTel”) by its attorneys, hereby submits these comments in response to the Commission’s *Public Notice* in the above-captioned proceeding.<sup>1</sup> The Public Notice invites interested parties to comment on the Application of Verizon New England, Inc., *et al.* (“Verizon”) to provide in-region interLATA services in the Commonwealth of Massachusetts, pursuant to section 271 of the Communications Act of 1934, as amended (the Act).

**I. VERIZON HAS NOT MET THE REQUIREMENTS OF §271**

Verizon has not demonstrated that it can comply with the competitive checklist<sup>2</sup> while at the same time meeting the company’s obligations to provision access services. In

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<sup>1</sup> *Public Notice*, Comments Requested on the Application by Verizon New England Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Massachusetts, DA 01-106 (January 16, 2001) (“*Public Notice*”).

<sup>2</sup> 47 U.S.C. 271(c)(2)(B).

addition, Verizon has not demonstrated compliance with §271(d) of the Act since there is no way to verify that the requested interLATA authority will be carried out consistent with §272's non-discrimination requirements.

Verizon's current performance in provisioning access services is well below satisfactory levels. Following interLATA entry, Verizon will still dominate the local access market and can easily discriminate in favor of its own affiliate. There is presently no way to ensure that the extended delays in obtaining access that carriers are now facing will not be used to the competitive advantage of Verizon's Section 272 affiliate, because no reporting requirement exists to measure whether the poor performance competitive carriers are receiving will also be borne by Verizon's long distance affiliate. The Commission must therefore require Verizon and all other 271 applicants to report special access performance – using performance metrics similar to those that Verizon just agreed to report for backbone provider Genuity<sup>3</sup> – prior to receipt of Section 271 authority.

CompTel raised this critical issue in its comments on Verizon's failed §271 application for Massachusetts.<sup>4</sup> Since Verizon's failed application was withdrawn, its extremely poor special access performance has continued unabated. As the attached Affidavit of Theresa Hennesy, Vice President of Service Delivery for CompTel member Cable & Wireless USA demonstrates, Verizon's performance has been very poor.

---

<sup>3</sup> *In re Application of GTE CORPORATION, Transferor, and BELL ATLANTIC CORPORATION, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, FCC 00-221 (rel. June 16, 2000) ("*BA/GTE Merger Order*").

<sup>4</sup> Application by Verizon New England Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Massachusetts, CC Docket No. 00-176 ("*Verizon F*").

Cable & Wireless USA (C&W USA) has continued to experience persistent and extended delays in the installation of special access services ordered from Verizon. In fact, Verizon has missed the due date on over half of the DS1 circuits ordered by C&W USA, for most of the past 18 months (region-wide). During this time, Verizon's average provisioning interval for DS1 circuits to C&W USA was almost **twenty days** -- more than twice the standard provisioning interval for such circuits according to Verizon's interstate access tariffs

Verizon's performance in Massachusetts was no different. There Verizon has missed its own due date for provisioning DS1 circuits to C&W USA more than 50% of the time over the past six months. Furthermore, the provisioning intervals for DS1 circuits have been as long as 43 days, with an average interval of over **26 days** (almost three times the tariffed interval). Even while under the section 271 spotlight in December, 2000, Verizon only managed to provision only two-thirds of both the DS0 and DS1 circuits ordered by C&W USA on time.

Verizon is clearly unable to provision wholesale and special access services simultaneously, a circumstance that must cause the Commission to question the reliability of the performance upon which Verizon is relying in its attempt to prove compliance with checklist items one and five.<sup>5</sup> Even assuming, *arguendo*, that Verizon's current UNE performance is minimally acceptable for checklist purposes, that performance data cannot be accepted since it was only attainable at the expense of satisfactory access performance. Section 271 applicants must be able to prove that they can provision both UNE transport and access, not just one or the other. Since Verizon has not made such a demonstration, and in light of Verizon's actual performance, the Commission must deny the application at this time.

---

<sup>5</sup> 47 U.S.C. 271(c)(2)(B)(i) and (v).

Since the issue of satisfactory access provisioning and the related issue of simultaneous access and UNE provisioning have not been resolved following the Commission's termination of the prior docket,<sup>6</sup> CompTel is resubmitting its prior comments.<sup>7</sup> CompTel respectfully requests that its prior comments be incorporated into the record of this new docket pursuant to the Commission's January 16, 2001, Public Notice.<sup>8</sup>

---

<sup>6</sup> *Verizon I*, DA 00-2851, rel. December 18, 2000.

<sup>7</sup> *Verizon I*, Comments of the Competitive Telecommunications Association, October 16, 2000, attached hereto as Attachment Two.

<sup>8</sup> *Public Notice* at page 1.

## II. CONCLUSION


Since Verizon has not demonstrated the capability to provision both access and UNE circuits adequately, the Commission must deny Verizon's application at this time. To properly measure this performance on an ongoing basis, and to guard against post-entry discrimination, the Commission must require Verizon and all other §271 applicants to report special access performance with regard to all of their affiliates.

Respectfully submitted,

COMPETITIVE TELECOMMUNICATIONS  
ASSOCIATION

Dated: February 6, 2001

By:



Robert J. Aamoth  
Steven A. Augustino  
Andrew M. Klein

Jonathan Lee  
Vice President – Federal Regulatory Affairs  
COMPETITIVE TELECOMMUNICATIONS  
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Attorneys for the Competitive  
Telecommunications Association



Application by Verizon New England, )  
 Inc., Bell Atlantic Communications, )  
 Inc. (d/b/a Verizon Long Distance), ) CC Docket No. 01-9  
 NYNEX Long Distance Company )  
 (d/b/a Verizon Enterprise Solutions), )  
 and Verizon Global Networks, Inc., )  
 for Authorization to Provide In-region )  
 InterLATA Services in Massachusetts )

**STATE OF VIRGINIA                    )**  
**)**  
**COUNTY OF FAIRFAX                )**

1. My name is Theresa Hennesy. My business address is 8219 Leesburg Pike, Vienna, Virginia. I am the Vice President of Service Delivery for Cable & Wireless USA. In this position, I am responsible for delivering services to the customers for all products sold within the USA.

2. I joined Cable & Wireless USA (C&W USA) in February, 2000. Previously I was employed by MCIWorldcom for 20 years with working experience in Engineering, Operations, Network Management and Service Delivery. My last position at MCIWorldcom was Senior Director of Internal Requirements and Optimization. In that capacity I was responsible for all network circuit ordering, installation and activation which supported the Worldcom internet affiliates, UUNET/Compuserve/AOL Network Services. In that role I was

responsible for managing circuit installations to include management of vendor deliveries for local loop installations. In my present role, I am responsible for all aspects of the installation process for customers' services, which also includes the monitoring and management of vendor performance.

### **VERIZON'S POOR PERFORMANCE TO CABLE & WIRELESS USA**

3. C&W USA offers a complete portfolio of domestic and international voice, data, Internet and messaging services delivered via an all-digital, nationwide, fiber optic network. C&W USA's focus for future growth is on IP (Internet Protocol) and data services and solutions for business customers. In support of this strategy, C&W USA is developing advanced IP networks and value-added services. With the capability of its global IP infrastructure and its strength in key markets, C&W USA has emerged as one of the top global IP providers to business customers, and one of the largest Internet backbone carriers in the World.
4. In order to compete effectively in the United States, C&W USA must obtain access to local infrastructure in order to connect customers to its network. To serve customers in Massachusetts on a dedicated basis, C&W USA orders special access services out of Verizon's interstate access tariffs. Such service typically includes the provision by Verizon of a high-capacity loop (e.g., DS1, DS3) and interoffice transport. Although C&W USA uses alternative providers when available, Verizon continues to maintain overwhelming control over the access market. C&W USA is, therefore, critically dependent on Verizon for its ability to serve customers in a timely and reliable manner.
5. In my affidavit in response to Verizon's first application to provide long distance service in Massachusetts, I outlined some of the problems C&W USA has experienced in obtaining

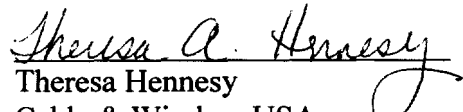
special access services from Verizon. At that time, I explained that Verizon's inability to provision special access services to C&W USA in a timely and reliable manner was adversely affecting C&W USA's ability to compete effectively in the Massachusetts market.

6. Unfortunately, since the time of Verizon's initial filing, Verizon's performance has not improved. C&W has continued to experience persistent and extended delays in the installation of special access services ordered from Verizon. For most of the past 18 months, Verizon has provisioned less than 50% of C&W's DS1 circuits on time, region-wide. During this same time frame, the average provisioning interval for DS1 circuits was a disappointing 19.7 days, which is more than twice the standard provisioning interval for such circuits according to Verizon's interstate access tariffs
7. In Massachusetts, Verizon has failed to provision more than half of the DS1 circuits ordered by C&W USA on their scheduled due date over the past six months. Provisioning intervals for DS1 circuits have ranged from 12-43 days, with an average interval of 26.3 days (almost three times the tariffed interval of 9 days). In December, 2000, Verizon managed to provision only two-thirds of both the DS0 and DS1 circuits ordered by C&W USA on time.
8. C&W has met repeatedly with Verizon to reconcile data and identify ways to improve its performance. Although these efforts have resulted in several short-term spikes in Verizon's on-time performance, Verizon quickly reverts to sub-standard provisioning within a month or two.
9. Verizon's inability to meet its committed due dates has a direct and adverse impact on C&W USA's ability to effectively serve its customers. The provisioning dates we obtain from Verizon and then communicate to our customers are not only unacceptably lengthy, but prove to be highly unreliable as well.

10. C&W USA estimates that it continues to lose approximately 10% of its customers in the Verizon territory due to service provisioning problems for which Verizon is responsible.

This concludes my affidavit.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

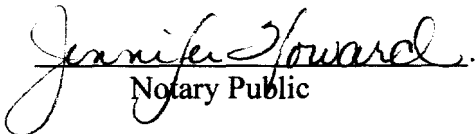
  
Theresa Hennesy  
Cable & Wireless USA

STATE OF VIRGINIA     )  
                                      )     ss  
COUNTY OF FAIRFAX    )

Subscribed and sworn to before me this 6 day of February, 2001.

Witness my hand and official seal.

My Commission expires: 01/31/02 .

  
Notary Public



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

Application by Verizon New England,	)	
Inc., Bell Atlantic Communications,	)	
Inc. (d/b/a Verizon Long Distance),	)	CC Docket No. 00-176
NYNEX Long Distance Company	)	
(d/b/a Verizon Enterprise Solutions),	)	
and Verizon Global Networks, Inc.,	)	
for Authorization to Provide	)	
In-region, InterLATA Services in	)	
Massachusetts	)	

**COMMENTS OF THE  
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

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Vice President – Federal Regulatory Affairs  
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Washington, D.C. 20036  
(202) 955-9600

Its Attorneys

Dated: October 16, 2000

## SUMMARY

Verizon has violated the Commission's "complete as filed" rule, through its October 13, 2000, filing. Since the Commission has repeatedly held that an applicant may not, during the pendency of its application, supplement its application by submitting new factual evidence this filing should not be considered. Without this filing, however, Verizon's application clearly fails. The Commission should therefore dismiss the application without prejudice to renew once this issue has been satisfactorily vetted.

Verizon repeatedly claims in its application that its performance in Massachusetts is similar to the performance it provided in New York. Although CompTel agrees that Verizon should demonstrate performance that is *at least* as good as that previously shown by Verizon (then Bell Atlantic) in New York, Verizon's attempted comparison is unflattering in three significant respects.

First, the effective prices for unbundled network elements ("UNEs") in Massachusetts exceed the prices for identical UNEs in New York, and violate the pricing standard of Section 252. The presence of these excessive prices is hindering the development of full competition in Massachusetts. Even considering Verizon's "13<sup>th</sup> hour" price reduction proposed only three days ago, Verizon has not satisfied its obligation in item two of section 271's competitive checklist to demonstrate that its UNE prices meet Section 252's cost standards.

Second, BOCs pose a threat to fair competition in all interLATA service markets – both voice and data - once they receive 271 authority, since they will still dominate the local access market and can discriminate in favor of their own affiliate. Competitive carriers in New

York have been facing lengthy delays in obtaining special access circuits for over a year now.

While this poor performance raises serious questions about Verizon's ability to provision wholesale and special access services simultaneously, it also raises a serious questions about the competitive impact of this performance. Presently, there is no way to be sure that Verizon's special access delays will not be used to the competitive advantage of Verizon's Section 272 affiliate, because no reporting requirement exists to measure whether the poor performance competitive carriers are receiving is also being borne by Verizon's long distance affiliate. To guard against discrimination, the Commission must require Verizon and all other 271 entrants to report special access performance – using performance metrics similar to those that Verizon just agreed to report for backbone provider Genuity – as a condition to receipt of Section 271 authority.

Third, unlike New York, Verizon has been unable to provision interconnection trunks in the quantities forecasted and requested by competitive carriers. Until Verizon can demonstrate its ability to provision interconnection trunks as requested, it cannot satisfy the Section 271 checklist.

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**Before the  
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**I. INTRODUCTION**

Verizon has violated the Commission’s “complete as filed” rule, through its October 13, 2000, rate filing.<sup>2</sup> Since the Commission has repeatedly held that “[a]n applicant may not, at any time during the pendency of its application, supplement its application by submitting new factual evidence that is not directly responsive to arguments raised by parties

---

<sup>1</sup> *Public Notice*, Comments Requested on the Application by Verizon New England Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Massachusetts, DA 00-2159 (Sept. 22, 2000).

<sup>2</sup> Letter from Gordon R. Evans, Verizon VP Federal Regulatory, to Hon. Magalie R. Salas, Secretary, Federal Communications Commission.

commenting on its application,”<sup>3</sup> this filing should not be considered. Without this filing, however, Verizon’s application clearly fails. The Commission should therefore dismiss the application without prejudice to renew once this issue has been satisfactorily vetted.

Verizon repeatedly claims in its application that its performance in Massachusetts is similar to the performance it provided in New York. Although CompTel agrees that Verizon should demonstrate performance that is *at least* as good as that previously shown by Verizon (then Bell Atlantic) in New York, Verizon’s attempted comparison is unflattering in three significant respects.

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Second, BOCs pose a threat to fair competition in all interLATA service markets – both voice and data - once they receive 271 authority, since they will still dominate the local access market and can discriminate in favor of their own affiliate. Competitive carriers in New

---

<sup>3</sup> *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, ¶ 34 (1999)(“*New York 271 Order*”), *aff’d*, *AT&T v. FCC*, 220 F.3d 607 (D.C. Cir. 2000), *citing Application by Ameritech Michigan Pursuant to Section 271 of the Communications Act, as amended, To Provide In-Region, InterLATA Service in Michigan*, CC Docket No. 97-137, 12 FCC Rcd 20543 (1997)(“*Michigan 271 Order*”).

<sup>4</sup> 47 U.S.C. §271(c)(2)(B)(ii).

York have been facing lengthy delays in obtaining special access circuits for over a year now.

While this poor performance raises serious questions about Verizon's ability to provision wholesale and special access services simultaneously, it also raises serious questions about the competitive impact of this performance. Presently, there is no way to be sure that Verizon's special access delays will not be used to the competitive advantage of Verizon's Section 272 affiliate, because no reporting requirement exists to measure whether the poor performance competitive carriers are receiving is also being borne by Verizon's long distance affiliate. To guard against discrimination, the Commission must require Verizon and all other 271 entrants to report special access performance – using performance metrics similar to those that Verizon just agreed to report for backbone provider Genuity<sup>5</sup> – as a condition to receipt of Section 271 authority.

Third, unlike New York, Verizon has been unable to provision interconnection trunks in the quantities forecasted and requested by competitive carriers. Until Verizon can demonstrate its ability to provision interconnection trunks as requested, it cannot satisfy Section 271's standards.

## **II. VERIZON HAS VIOLATED THE COMMISSION'S "COMPLETE AS FILED RULE"**

The Commission has repeatedly stated its expectation that each "271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings."<sup>6</sup> Through its October 13, 2000 filing, Verizon has

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<sup>5</sup> *In re Application of GTE CORPORATION, Transferor, and BELL ATLANTIC CORPORATION, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, FCC 00-221 (rel. June 16, 2000) ("*BA/GTE Merger Order*").

<sup>6</sup> *New York 271 Order* at ¶ 34.

clearly violated what has become known as the Commission's "complete as filed" rule. The application should therefore be rejected on that ground or, at the very least, dismissed without prejudice.<sup>7</sup>

In its October 13, 2000, transmittal letter to the Massachusetts DTE, Verizon unabashedly states that it is "proposing these [rate] reductions to eliminate pricing issues . . . in its Section 271 application now pending before the FCC." By this statement, Verizon is making two admissions. First, Verizon is tacitly admitting that the prices contained in its application are not in compliance with section 271 of the Act, and must be changed before the company can obtain interLATA relief. In addition, Verizon is essentially pleading guilty to a violation of the well-established "complete as filed" rule since its stated intent is "to eliminate [an issue]" relating to an important aspect of the 271 application already pending at the FCC. Since it is the BOCs and not the CLECs that control the timing of 271 applications, the Commission should continue to "ensure that commenters are not faced with a 'moving target'"<sup>8</sup> in the 271 process and dismiss Verizon's application as "incomplete as filed."

By unilaterally announcing new prices for UNEs, Verizon has finally attempted to address an issue that CLECs had been raising for some time. Seven months ago, for example, AT&T Communications of New England petitioned the Massachusetts DTE to review the very rates now addressed by Verizon. Thus, Verizon has known that this would be a contentious issue

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<sup>7</sup> The Commission has also said in the past that it "retain[s] the discretion to start the 90-day review process anew or to accord such evidence no weight." *Id.* In that same Order, at paragraph 35, the Commission went on to say that it is "highly disruptive" to have a record that is "constantly evolving." CompTel wholeheartedly agrees.

<sup>8</sup> *New York 271 Order* at ¶ 35.

in any §271 filing, and has now attempted to address it without any opportunity for substantive comment by the parties affected.<sup>9</sup>

Verizon's new tariff filing, received by the undersigned counsel today, ostensibly changes prices for various UNEs and reduces reciprocal compensation rates. The effect of this filing is not clear. Since the Massachusetts DTE has already declined the opportunity to review Verizon's rates, it is not known whether these rates will actually go into effect, and if they do, for how long they will remain effective. In other words, these are not permanent rates, and are not even interim rates; Verizon does not even have a "concrete and specific obligation" to provide UNEs at these rates at this point. Verizon should voluntarily withdraw and re-file its §271 application, together with appropriate affidavits explaining what its October 13, 2000, filing actually does, and does not do. All parties and, more importantly, the Commission, will then be in a position to gauge the extent to which Verizon has complied with the Section 271 checklist.

### **III. VERIZON'S APPLICATION FAILS TO SATISFY CHECKLIST ITEM TWO**

Item two of the competitive checklist requires Verizon to demonstrate that it provides "nondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3) and 252(d)(1)" of the Act.<sup>10</sup> The pricing prong of checklist item two requires a BOC to demonstrate that it provides UNEs in accordance with section 252(d)(1) of the Act.<sup>11</sup> Pursuant to section 252(d)(1), determinations by a state commission of just and reasonable rates

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<sup>9</sup> CompTel would note that while it is in favor of lower UNE rates, it believes that this is not the proper time or forum for exploration of rate issues.

<sup>10</sup> 47 U.S.C. § 271(c)(2)(B)(ii).

<sup>11</sup> 47 U.S.C. §§ 271(c)(2)(B)(ii), 252(d)(1).

for network elements shall be “based on the cost ... of providing ... the network element ... and nondiscriminatory, and may include a reasonable profit.”<sup>12</sup> In accordance with its statutory authority, the Commission has adopted the Total Element Long Run Incremental Cost (“TELRIC”) pricing methodology that state commissions must utilize in setting the rates for UNEs.

In the section 271 context, “a BOC must show that its prices for interconnection and unbundled network elements are based on forward-looking, long-run incremental costs” in order to demonstrate compliance with checklist item ii.<sup>13</sup> As demonstrated below, however, Verizon has failed to make this showing in its application.<sup>14</sup>

**A. Verizon’s UNE Rates In Massachusetts Do Not Satisfy The Cost-Based Pricing Prong of Checklist Item Two**

To demonstrate compliance with checklist item two, Verizon relies on the fact that it provides UNEs in Massachusetts “using substantially the same processes and procedures that it uses in New York, . . . which the Commission found satisfy the requirements of the Act.”<sup>15</sup> While there is some consistency between Massachusetts and New York regarding UNE provisioning, the same does not hold true for UNE pricing.<sup>16</sup> Indeed, whereas the UNE rates in

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<sup>12</sup> 47 U.S.C. § 252(d)(1).

<sup>13</sup> *New York 271 Order*, ¶ 237.

<sup>14</sup> As noted earlier, Verizon has just served a tariff filing which appears to contain significantly lower rates for several UNE elements. Since the nature and true effect of this filing is far from clear, this filing will focus on the rates contained in the Verizon application.

<sup>15</sup> Verizon Brief at p16.

<sup>16</sup> While the usage sensitive charge related to unbundled local switching (“ULS”) are the most egregiously overpriced UNE-P component in Massachusetts, CompTel notes that other UNE items, including switch ports, are also priced at excessively.

New York have made mass market competition possible, the UNE rates in Massachusetts have foreclosed mass market competition.<sup>17</sup>

As noted in the *New York 271 Order*, the Commission will reject an application on pricing grounds “if basic TELRIC principles are violated or the state commission makes clear errors in factual finding on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.”<sup>18</sup>

The Massachusetts DTE is aware that a number of parties believe that the existing ULS rates are excessive. The DTE has, however, declined to re-open a cost proceeding to examine these rates. On March 13, 2000, AT&T filed a petition with the DTE asking that it review and reduce a series of UNE related charges. CompTel, the Commonwealth of Massachusetts Office of the Attorney General, and others supported the AT&T petition. However, the DTE refused to consider it as part of the section 271 proceeding or to docket those issues in a separate proceeding.<sup>19</sup>

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<sup>17</sup> If similarities with New York result in a presumption of compliance with the competitive checklist in Massachusetts, then material differences with New York should result in a presumption that Verizon has failed to comply with the checklist in Massachusetts. Although Verizon’s procedures, policies, and OSS for providing the UNE-P in Massachusetts may be essentially similar to New York, the rates for the UNE-P are materially higher in Massachusetts. These rates are so much higher, in fact, that the Commission should reject Verizon’s application.

<sup>18</sup> *New York 271 Order* at ¶ 244 (1999). CompTel notes that arguments regarding the exact status of the Commission’s TELRIC standard are irrelevant with respect to ULS. The existing debate surrounding TELRIC relates to the Commission’s requirement that the most efficient technology will be adopted by incumbents. This has had no impact on ULS, as circuit switching is ubiquitously deployed by incumbents at present, and the rates set for ULS are based on costs that incumbents allege they already incur or have incurred in the past. Of course, substantial debate continues to exist as to whether incumbents, including Verizon, have made state commissions aware in cost proceedings of the substantial switch discounts they receive from vendors.

<sup>19</sup> See Verizon Brief at 68.

In the *Texas 271 Order*, the Commission declined to take action on numerous SWBT rates on grounds that those rates were interim and the Texas Commission was in the process of conducting a rate case.<sup>20</sup> There, the Commission stated:

[W]e are reluctant to deny a section 271 application because a BOC is engaged in an unresolved rate dispute with its competitors and the relevant state commission, which has primary jurisdiction over the matter, is currently considering the matter. Instead, as we have explained, interim rate solutions are a sufficient basis for granting a 271 application when an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set.<sup>21</sup>

The facts and circumstances in the instant application do not meet this standard.

The existing UNE rates in Massachusetts are substantially higher than the FCC proxy, and therefore fall “outside of the range that the reasonable application of TELRIC principles would produce.”<sup>22</sup> The Massachusetts DTE has declined to adjust Verizon’s rates to fall within the Commission’s default proxies or to open a cost docket to review these rates in response to a reasonable AT&T petition. No interim rates for the items cited by AT&T are pending subject to true up, and the DTE has no stated plans to convene a cost proceeding.<sup>23</sup> Furthermore, because the DTE’s existing rates are substantially higher than the Commission’s

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<sup>20</sup> *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant To Section 271 Of The Telecommunications Act Of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion and Order, CC Docket No 00-65, FCC 00-238, ¶¶ 234-239 (rel. June 30, 2000) (“*Texas 271 Order*”). See also, *New York 271 Order*, ¶ 259.

<sup>21</sup> *Texas 271 Order*, ¶ 236.

<sup>22</sup> *First Report and Order*, ¶ 812.

<sup>23</sup> The DTE has not, in fact, conducted a true all-party rate proceeding. The rates were not determined in a generic cost docket, as those in New York were, but resulted instead from a consolidated proceeding to arbitrate several discrete interconnection agreements.

proxies and because the DTE has declined to act on AT&T's petition to set TELRIC-based rates, the DTE's commitment to the Commission's pricing standard is unclear.

For these reasons, the Commission may – and should – act to ensure that Verizon is providing UNEs at rates consistent with TELRIC prior to any grant of section 271 authority in Massachusetts. Any other result would sanction Verizon's entry into the in-region, long distance markets before the Massachusetts local exchange market is open to competition. The Commission should deny Verizon's Application to provide in-region, interLATA services in Massachusetts until such time as the exceedingly high UNE rates are appropriately addressed.

**IV. THE COMMISSION MUST ADOPT PERFORMANCE MEASUREMENTS FOR VERIZON'S SECTION 272 AFFILIATE.**

In previous Section 271 orders, the Commission has focused on mechanisms to ensure that RBOCs do not discriminate in favor of their own retail local services or their separate affiliates for data services.<sup>24</sup> This Application now provides an excellent opportunity for the Commission to consider the potential for preferential treatment in the provisioning of special access services used by Verizon's Section 272 affiliate and competitors alike. As discussed below, Verizon's special access provisioning has been well below acceptable levels in New York since late 1999. While this level of performance for competitive carriers is disturbing in and of itself, the lack of comparative data makes it impossible to determine whether Verizon's affiliate is receiving preferential treatment or whether Verizon is simply unable to provision an acceptable level of service in both the local wholesale and special access markets simultaneously. In order to illuminate this critical issue, CompTel urges the Commission to

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<sup>24</sup> See, for example, the *New York §271 Order* at ¶ 429 (“these [performance assurance] mechanisms can serve as critical complements to the Commission's authority to preserve checklist compliance pursuant to 271(d)(6)"); and *BA/GTE Merger Order* at ¶ 330.

require that the special access performance metrics already used for measuring Verizon's treatment of Genuity be used for Verizon's Section 272 affiliate as well. This additional reporting requirement would not be burdensome, and would provide competitive carriers with a means to judge whether Verizon's Section 272 affiliate is operating within the statutory requirements.<sup>25</sup>

The importance of the ability of carriers to judge the performance they are receiving on a comparative basis was highlighted by the Commission in *the New York 271 Order*. The Commission stated therein that, "to the extent that parties are experiencing delays in the provisioning of special access services ordered from Bell Atlantic's federal tariffs, we note that these issues are appropriately addressed in the Commission's section 208 complaint process."<sup>26</sup> Without clear reporting requirements, and comparative data, it is difficult for carriers to avail themselves of the 208 complaint process to which they have been referred.

The potential for an RBOC's corporate self-interest to result in discriminatory conduct is beyond dispute. While the Commission has stated in the past that it will not require a demonstration of public interest benefit from BOC long distance entry,<sup>27</sup> the Commission should consider the potential harm to the interLATA voice and data markets caused by the entry of a firm with the ability to discriminate in the provisioning of access services essential to its competitors.

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<sup>25</sup> E.g. 47 U.S.C. 272(c).

<sup>26</sup> *New York 271 Order*, at ¶ 341.

<sup>27</sup> *Id.* at ¶ 428.

Indeed, incumbent LECs possess “both the incentive and the ability to discriminate against competitors” in “all retail markets in which they participate.”<sup>28</sup> Congress partially addressed this danger with sections 272(c) and (e) of the Telecommunications Act of 1996.<sup>29</sup> In 272(c), the Act prohibits BOC discrimination in favor of its affiliates, while 272(e)(1) specifically requires BOCs to “fulfill any requests from an unaffiliated entity” for either exchange service or exchange access “within a period no longer” than the time the BOC takes to provision that service or access to itself or its affiliates.<sup>30</sup> While Section 272(c)(2) requires that all transactions between the BOC and its affiliate be accounted for in accordance with the Commission’s accounting safeguards, a critical gap remains in that there is no current requirement that BOCs report the provisioning of tariffed services such as special access between the BOC and its affiliates.

This lack of comparable data is significant because recent evidence indicates that Verizon’s performance in providing special access services to competitors has remained below acceptable levels for over a year. The provisioning intervals observed by a CompTel member company, Cable & Wireless USA, Inc. (“C&W USA”), are illustrative.<sup>31</sup> The provisioning intervals for DS-1s to C&W USA in New York, for example, have exceeded 14-20 days, on

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<sup>28</sup> *SBC Ameritech Merger Order* at ¶ 190. Verizon cannot demonstrate that it provides service in a nondiscriminatory manner absent performance measurements.

<sup>29</sup> Codified at 47 U.S.C. 272 (hereinafter “the Act”).

<sup>30</sup> 47 U.S.C. 272(e)(1).

<sup>31</sup> CompTel is in the process of gathering relevant information about Verizon’s special access performance, which it will present in an *ex parte* filing as soon as possible.